David E. R. Woolley
Peter J. Crosby, IV
Lillick McHose & Charles
725 S. Figueroa Street, Suite 1200
Los Angeles, California 90017-2513
(213) 488-7100
Attorneys for Defendants
CC SAN FRANCISCO and
CHAR YIGH MARINE (PANAMA) S.A.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

INTERPOOL, LIMITED,
Plaintiff,
vs.
CHAR CHING MARINE (H.K.) CO., LTD.,
CHAR HSING MARINE CO., LTD.,
E.C. YANG, CHAR AN MARINE (PANAMA) S.A.;
CHAR CHE MARINE (PANAMA) S.A.,
CHAR CHERNG MARINE (PANAMA) S.A.,
CHAR CHUN MARINE (PANAMA) S.A.,
CHAR NING MARINE (PANAMA) S.A.,
CHAR FUH MARINE (PANAMA) S.A.,
CHAR HANG MARINE (PANAMA) S.A.,
CHAR HO HANG MARINE (PANAMA) S.A.,
CHAR HOONG MARINE (PANAMA) S.A.,
CHAR HUI MARINE (PANAMA) S.A.,
CHAR JIN MARINE (PANAMA) S.A.,
CHAR LIAN MARINE (PANAMA) S.A.,
CHAR LO MARINE (PANAMA) S.A.,
CHAR LY MARINE, CHAR SUO MARINE
(PANAMA) S.A., CHAR TAI MARINE
(PANAMA) S.A., CHAR YEUNG MARINE
(PANAMA) S.A., MULTI-CARRIER (PANAMA)
S.A., YUAN-LIAN CHANG MARINE (PANAMA)

S.A., C.C. LINE HOLDING, LTD. and CHAR YIGH MARINE (PANAMA) S.A.,
Defendants.

Case No. CV 84-6333 JWC

DEFENDANT CHAR YIGH MARINE (PANAMA) S.A.'S ANSWERS TO JURISDICTIONAL INTERROGATORIES

INTRODUCTORY STATEMENT

Char Yigh answers the following interrogatories based upon a comprehensive review of its own records, of the records and recollections of its officers, and upon such materials as are in the hands of its attorneys (although nothing in this respect is intended as a waiver of the attorney-client privilege). The answers herein are composite, and are as true and correct as can possibly be made at this time with the materials and recollections which we have obtained.

* * *

[omitted Interrogatory No. 1]

Interrogatory No. 2

Please state each and every reason why you contend Sumitomo Bank has no control over Char Yigh.

Answer to Interrogatory No. 2

The Sumitomo Bank, Ltd. exercises no daily or general control over the activities of Char Yigh what-

soever. The Sumitomo Bank, Ltd. owns and owned no share in Char Yigh at any time, nor did it have common directors or officers at any time.

Char Yigh has been able to determine that The Sumitomo Bank, Ltd., provided *no* funds for the purchase of CC SAN FRANCISCO, and received *no* funds from the sale of CC SAN FRANCISCO.

Char Yigh Marine (Panama) S.A. was formed in Panama City, Panama on the 15th of October, 1982 for the purpose of shipowning. The company at that time was a wholly-owned subsidiary of C.C. Line Holding, Ltd., a company incorporated and registered in Hong Kong. At the time of formation, the directors of Char Yigh were Yang E. Chang, President/ Director, Chang Lian Deng, Treasure/Director, Tu Pai Ying, Secretary/ Director. None of these persons, and no part of Char Yigh, was controlled by The Sumitomo Bank, Ltd.

So far as it is known to the trustees of Char Yigh, in November, 1982, Char Yigh, as part of plans to create a regular liner service from the Far East to the West Coast of the United States, entered into a building contract with Sanoyasu Dockyard Co., Ltd. for the construction of Hull No. 1058, ultimately to be named CC SAN FRANCISCO, at a cost of ¥3,850,000,000.

The building contract provided for three payments each of ¥192,500,000 prior to delivery, and the balance of the price to be paid at delivery. By an addendum to the building contract, the contract price under the building contract was increased by ¥140,000,000 to a total ¥3,990,000,000.

Post-delivery financing was required, and this was sought through SB General Leasing (Hong Kong) Co., Ltd. The arrangements are recorded in a Share Purchase Agreement, dated December 16, 1982, to which was attached the draft bareboat charter agreement, under

which the vessel CC SAN FRANCISCO would be operated by Char Jin Marine (Panama) S.A. after delivery. Pursuant to the terms of the Share Purchase Agreement, on delivery of the vessel CC SAN FRANCISCO, the shares in Char Yigh would be sold to SB General Leasing (Hong Kong) Co., Ltd., and the then directors replaced. Such a financing method using a bareboat charter was and is in common use in Hong Kong and elsewhere.

During the period of construction, funds in the sum of ¥577,500,000 were indeed provided by C.C. Line Holding, Ltd., for and on behalf of its subsidiary, Char Yigh, representing the first three payments under the building contract with Sanoyasu Dockyard Co., Ltd. As far as the present trustees can determine, none of these funds came from The Sumitomo Bank, Ltd.

On November 4, 1983, shortly prior to the delivery of the vessel CC SAN FRANCISCO, the then directors and officers of Char Yigh resigned and were replaced by the following: Koji Uchida as Director/President, Takeshi Hiramine as Director/ Treasurer, and Esther Lin Chun Ngan as Director/Secretary.

The transfer of shares was effected by a resolution of the directors of C.C. Line Holding, Ltd., dated November 4, 1983, and a formal Instrument of Transfer dated November 8, 1983. No part of the funds used for the purchase of Char Yigh by SB General Leasing (Hong Kong) Co., Ltd., was provided by The Sumitomo Bank, Ltd.

On delivery of the vessel CC SAN FRANCISCO on November 7, 1983, the balance of the purchase price under the building contract was paid. Char Yigh obtained funds to pay the balance of the purchase price under a Loan Agreement dated November 7, 1983, with SB General Leasing (Hong Kong) Co., Ltd.

No Part of the funds required for the purchase of the vessel CC SAN FRANCISCO from Sanoyasu Dockyard Co., Ltd., were provided to Char Yigh or to its lender by The Sumitomo Bank, Ltd.

Pursuant to the terms of the said Loan Agreement, Char Yigh had undertaken to provide a mortgage to SB General Leasing (Hong Kong) Co., Ltd. Such a written mortgage was prepared between Char Yigh and SB General Leasing (Hong Kong) Co., Ltd., and filed on August 14, 1984 with the Panamanian authorities.

The agreement to grant a mortgage was not in any way directed or controlled by The Sumitomo Bank, Ltd., nor was the preparation, execution, and filing of the mortgage in August, 1984 in any way directed or controlled by The Sumitomo Bank, Ltd.

Upon delivery, CC SAN FRANCISCO was registered under the laws of Panama to the ownership of Char Yigh; Char Yigh entrusted the operation of the vessel to Char Jin pursuant to the bareboat charterparty. The payments of charterhire under this bareboat charter were intended to enable Char Yigh to repay its borrowings from SB General Leasing (Hong Kong) Co., Ltd.

The difference between the rate of interest charged to Char Yigh under its Loan Agreement with SB General Leasing (Hong Kong) Co., Ltd., and that charged by Char Yigh to Char Jin under the Bareboat Charterparty, was intended to enable Char Yigh to meet its own corporate and other operating costs. At no time were any of the sums forming part of this difference between interest rates actually passed, or intended to be passed, on to The Sumitomo Bank, Ltd., nor was the level of profit, or the decision to take a profit, directed or required by The Sumitomo Bank, Ltd.

At no time was title in the vessel CC SAN FRANCISCO ever held by The Sumitomo Bank, Ltd., nor was

it at any time intended to be transferred to The Sumitomo Bank, Ltd. There is no factual basis whatsoever for any allegation that any funds herein were provided by The Sumitomo Bank, Ltd., from its own assets. *The Sumitomo Bank, Ltd. was a complete stranger to the transaction here involved, having neither financial, equitable, nor reversionary interest in any part of this transaction.*

As is well known to this court, by August, 1984 C.C. Line became unable to pay its obligations. As part of this inability, Char Jin was unable to pay charterhire to Char Yigh. Char Yigh declared Char Jin in default under the charterparty, and withdrew the vessel by writings of August 14 and 24, 1984 Char Yigh was unable to pay its loan obligations and Char Yigh therefore fell into default with SB General Leasing (Hong Kong) Co., Ltd., under its mortgage. Notices of demand by SB General Leasing (Hong Kong) Co., Ltd., were made following default by Char Yigh by notices in writing dated August 17 and 27, 1984. These notices of default were neither prepared by nor pursuant to the instructions of the The Sumitomo Bank, Ltd., in any way whatsoever.

Shortly before the vessel came into Los Angeles in August, 1984, Char Yigh attempted to wrest daily control and operation of the vessel from C.C. Line, which was obviously then in a state of near collapse. The decision of Char Yigh to attempt to reassert control over its vessel was not dictated to it, suggested to it, or required of it by The Sumitomo Bank, Ltd. in any way whatsoever.

After the arrest of the vessel CC SAN FRANCISCO in Los Angeles in August, 1984, Char Yigh and its mortgagee SB General Leasing (Hong Kong) Co., Ltd. were required to advance funds for fuel, food, wages, and general operation of the vessel. No part of these funds were advanced in any way, by The Sumitomo

Bank, Ltd., nor did The Sumitomo Bank, Ltd. have any direction or control over the use of these funds.

During the life of the contract with Char Jin, none of the funds or operational expenses of Char Yigh were in any way paid for, advanced, controlled or directed by The Sumitomo Bank, Ltd.

When it was necessary to release the vessel CC SAN FRANCISCO from arrest and attachments, Char Yigh and the mortgagee, SB General Leasing (Hong Kong) Co., Ltd., needed to procure security acceptable to the Plaintiffs. Because of the need to obtain security quickly, they did not approach any bank other than The Sumitomo Bank, Ltd. (although they could have done so), since The Sumitomo Bank, Ltd. was prepared to act quickly on the request of SB General Leasing Co., Ltd. in Tokyo acting at the request of SB General Leasing (Hong Kong) Co., Ltd., without requiring counter-security. The Sumitomo Bank, Ltd. has charged, and continues to charge for each outstanding letter of undertaking, premiums calculated at commercial rates. Of course, liabilities under these letters do not arise until judgments are awarded in the underlying cases satisfactory to the terms of the letters. Nonetheless, fees on account of the undertakings are collected and are paid regularly to The Sumitomo Bank, Ltd. The Sumitomo Bank, Ltd. has no direction or control over any aspect of the underlying litigation whatsoever in any of the cases in which letters of undertaking have issued. The Sumitomo Bank, Ltd., at no time exercised, and presently exercises neither general nor specific control over the conduct of Char Yigh in the present case.

The letter of undertaking issued in the present action was rejected by Interpool, and a bond from a U.S. bonding company was substituted. The letter has been exonerated.

In Japan, the vessel was arrested in much the same kind of proceeding as occurred in the United States. The arrests in Japan were performed by Japanese material-men and were instituted by Yatomi Shokai Company, Ltd., and Pacific Ocean Co., Ltd. who were represented by the Iida Law Office of Akasaka, Tokyo. Char Yigh appeared in this action through the law offices of Tanabe Sogo of Marunouchi, Tokyo. SB General Leasing (Hong Kong) Co., Ltd., as mortgagee, with the most to lose in this matter, was represented by the law firm of Shinmyo, Shimoyamada, Asai & Yamamori of Nishi-Shimbashi, Tokyo. None of the actions of these parties was in any way dictated by, directed by, or controlled by The Sumitomo Bank, Ltd.

The vessel CC SAN FRANCISCO was judicially sold, for a very substantial amount of money, being ¥2,950,000,000, which we believe represents a fair approximation of the vessel's market value. No event relating to the sale of CC SAN FRANCISCO by court auction was dictated or controlled by The Sumitomo Bank, Ltd. The sale was conducted in accordance with all notice and procedural requirements of Japanese law, and funds changed hands. After the proceeds of sale were received by the court, it deducted court costs and prior claims, and there was left a balance of ¥2,925,606,562 for distribution. No part of this sum was paid to The Sumitomo Bank, Ltd., and The Sumitomo Bank, Ltd. exercised no discretion, direction, or control over any part of these funds, while in the Registry of the Court in Japan, or after disbursement.

Char Yigh operated in exactly the way one would expect of a solvent, subsidiary corporation. It kept an independent bank account in Yen with The Sumitomo Bank, Ltd. in Osaka, operated on the instructions of Mr. Uchida, prepared the necessary minutes, kept other corporate records necessary to the operation of a

bonafide corporation, and it commissioned financial statements from well-recognized auditors. After the demise of C.C. Line, and the sale of its vessel by judicial auction, it was clear that Char Yigh had no further sources of income. Consequently, pursuant to the laws of Panama, it filed for dissolution in March of 1985. The effect of dissolution is to alter the status of those members of the Board of Directors at the time of dissolution into trustees of the affairs of Char Yigh. Under Panamanian law, trustees have power to continue to deal with all matters pertinent to the winding up of the affairs of Char Yigh, including this litigation, for as long as is necessary after the institution of dissolution proceedings. The decision to dissolve was neither directed, dictated by, nor controlled by The Sumitomo Bank, Ltd., in any way whatsoever.

At no time prior to the institution of this action, or within the period of this action, has The Sumitomo Bank, Ltd., in any event, sought to dictate the activities of any member of the Board of Directors of Char Yigh, and it would have no right to do so. The Sumitomo Bank, Ltd. had and has no power to control the composition of any part of the Board of Directors of Char Yigh.

* * *

[omitted pages 11-13]

In conclusion, at no stage in its existence was Char Yigh in any way subject to the discretion, direction or control of The Sumitomo Bank, Ltd. In particular, The Sumitomo Bank, Ltd. provided no part of the funds loaned to Char Yigh for the purchase of CC SAN FRANCISCO. As a result, The Sumitomo Bank, Ltd. received no part of the funds disbursed by the Court in Japan pursuant to the decree of judicial sale.

DATED: April 24, 1986

DAVID E. R. WOOLLEY
PETER J. CROSBY, IV
LILLICK McHOSE & CHARLES

/s/ David E. R. Woolley
David E. R. Woolley
Attorneys for Defendants
CC SAN FRANCISCO and
CHAR YIGH MARINE
(PANAMA) S.A.

DECLARATION OF TAKESHI HIRAMINE

I, Takeshi Hiramine, a trustee of Char Yigh Marine (Panama) S.A., with office and residence in Hong Kong, sign these interrogatories on behalf of Char Yigh Marine (Panama) S.A. I declare under penalty of perjury under the laws of the State of California that the answers are true and correct to the best of my information and belief, which is based on a combination of personal knowledge, information from other present trustees and former directors of Char Yigh, from documents and records, maintained by Char Yigh, and from reports of interviews and investigations made on behalf of Char Yigh.

DATED: April 30, 1986

/s/ Takeshi Hiramine
Takeshi Hiramine

at _____